UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC., Plaintiff, -against- NINTENDO CO. LTD. and NINTENDO OF AMERICA, INC., Defendants.	82 Civ. 4259 (RWS) AFFIDAVIT OF SANDRA EDELMAN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SANDRA EDELMAN, being duly sworn, deposes and says:

1. I am associated with Townley & Updike, attorneys for plaintiff Universal City Studios, Inc. ("Universal") in the above matter. I am fully familiar with the facts and circumstances of this case. I submit this affidavit in opposition to defendants' motion for summary judgment on Universal's Lanham Act, unfair competition and dilution claims.

2. I have compiled the exhibits to this affidavit from interrogatory responses submitted by both plaintiff and defendants in this action; from documents produced by the parties in response to document production requests; and from public documents. In the paragraphs that follow, I will explain from what source these exhibits were taken.

3. Exhibit 1 consists of excerpts from interrogatory responses given by plaintiff in discovery: Plaintiff's Response to the First Set of Interrogatories and First Request for Production by defendants, Interrogatory No. 1; Plaintiff's Response to Defendants' Third Set of Interrogatories and Third Request for Production to Plaintiff, Interrogatories Nos. 9 and 26.

4. Exhibit 2, Affidavit of Minoru Arakawa in Support of Plaintiff's Motion for a Temporary Restraining Order and a Preliminary Injunction in Nintendo of America, Inc. v. Aaron, No. A 3-82 0783 D. (N.D. Tex. 1982), was obtained from the public record in that case.

5. Exhibit 3 consists of correspondence written on behalf of RKO General, Inc. regarding protection of the KING KONG trademark. These documents were produced by plaintiff for defendants or by RKO General, Inc. for defendants pursuant to subpoena.

6. Exhibit 4 consists of letters written on behalf of Universal to RKO General, Inc., Dino DeLaurentiis Corp. and Paramount Pictures Corp., notifying these parties of Universal's plans to exploit the KING KONG trademark. These letters were produced by plaintiff to defendants.

7. Exhibit 5 is the license granted by Universal to Ben Cooper, Inc. to use the KING KONG trademark in connection with Halloween costumes and masks. This document was produced by Universal in response to Interrogatory No. 7 of Plaintiff's

Response to Defendants' First Set of Interrogatories and First Request for Production to Plaintiff.

8. Exhibit 6 is the license granted by Universal to Tiger Electronic Toys, Inc. to use the KING KONG trademark in connection with hand held electronic games, video games and video cartridges. This document was produced by Universal in response to Interrogatory No. 8 of Plaintiff's Response to Defendants' First Set of Interrogatories and First Request for Production to Plaintiff.

9. Exhibit 7 is the license granted by Universal to National Electronics and Watch Co., Ltd. to use the KING KONG trademark in connection with wrist game watches. This agreement, dated May 24, 1983, was executed after discovery in this case had closed.

10. Exhibit 8 is a copy of a newspaper article which was distributed by UPI on January 15, 1983. The article was obtained from NEXIS.

11. Exhibit 9 consists of an interrogatory response given by defendants in Answers and Supplemental Answers of Defendant Nintendo of America, Inc. to Plaintiff's First Interrogatories and First Request for Production of Documents, Interrogatory No. 5.

12. Exhibit 10 consists of covenants not-to sue agreements entered into by Universal with Coleco Industries, Inc., Atari Inc. and Ruby-Spears Enterprises, Ltd. The first

two documents were produced by Universal for defendants in discovery; attorneys for plaintiff did not receive the third document until after discovery in this case had closed.

13. Exhibit 11 consists of excerpts from the transcript of the proceedings in Universal City Studios Inc. v. RKO General, Inc., No. 75-3526-R (C.D. Cal. 1976). ("RKO litigation"). The entire trial transcript was produced by Universal in response to a document production request by defendants.

14. Exhibit 12 consists of documents filed with the Court of Appeals for the Ninth Circuit in connection with the RKO litigation, see ¶ 13 supra. These documents were produced by plaintiff in response to a document production request by defendants.

15. Exhibit 13 consists of all slip and unpublished opinions cited in PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. These are all public documents.

Sandra Edelman
SANDRA EDELMAN

Sworn to before me this
7th day of July, 1983

Christopher C. Larkin
NOTARY PUBLIC

CHRISTOPHER C. LARKIN
Notary Public, State of New York
No. 31-4741329
Qualified in New York County 5
Commission Expires March 30, 1984